

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

|                                   |   |                                  |
|-----------------------------------|---|----------------------------------|
| In the Matter of                  | ) | Case Nos.: <b>13-O-17328-LMA</b> |
|                                   | ) | (13-O-17667; 14-O-00478)         |
| <b>ROCHELLE ANN FORBIS,</b>       | ) |                                  |
|                                   | ) | <b>DECISION AND ORDER OF</b>     |
| <b>Member No. 231578,</b>         | ) | <b>INVOLUNTARY INACTIVE</b>      |
|                                   | ) | <b>ENROLLMENT</b>                |
| <u>A Member of the State Bar.</u> | ) |                                  |

In this matter, respondent Rochelle Ann Forbis was charged with seven counts of misconduct stemming from three matters. Respondent failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 8, 2004, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On March 24, 2014, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at her membership records address. The NDC notified respondent that her failure to participate in the proceedings would result in a disbarment recommendation. (Rule 5.41.) The return receipt card was not received by the State Bar.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included mailing a courtesy copy of the NDC to respondent at her membership records address, calling her at her membership records telephone number, sending an email and copy of the NDC to respondent at her membership records email address, and calling directory assistance in an attempt to locate alternative contact information for respondent.

Respondent failed to file a response to the NDC. On April 21, 2014, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on May 7, 2014. The order entering the default was served

on respondent at her membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On November 10, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has four other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on December 8, 2014.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

### **Case No. 13-O-17328 – The State Bar Investigation Matter**

Count One – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

### **Case No. 13-O-17667 – The Pruitt Matter**

Count Two – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform legal services with competence) by failing to complete and file a marriage settlement agreement on her client's behalf.

Count Three – respondent willfully violated rule 3-700(A)(1) of the Rules of Professional Conduct (withdrawal from employment without court permission) by effectively withdrawing from representation without the court's permission.

Count Four – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

### **Case No. 14-O-00478 – The Copping Matter**

Count Five – the court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.<sup>3</sup>

Count Six – respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2) (failure to refund unearned fees) by performing no legal services of value and failing to promptly refund her clients' unearned advanced fees.

Count Seven – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to

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<sup>3</sup> The State Bar merely alleged that respondent performed no legal services of value. This allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, as the State Bar properly served her with the NDC and made various efforts to contact respondent, including mailing a courtesy copy of the NDC to respondent at her membership records address, calling her at her membership records telephone number, sending an email and copy of the NDC to respondent at her membership records email address, and calling directory assistance in an attempt to locate alternative contact information for respondent;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Rochelle Ann Forbis be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

**Restitution**

The court also recommends that respondent be ordered to make restitution to Dana and Albert Copping in the amount of \$1,500 plus 10 percent interest per year from November 13, 2013. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Rochelle Ann Forbis, State Bar number 231578, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: January \_\_\_\_\_, 2015

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LUCY ARMENDARIZ  
Judge of the State Bar Court